

Division 3. Air Resources Board

Chapter 1. Motor Vehicle Pollution Control Devices

Article 6. Emission Control System Warranty

§ 2038. Performance Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles.

(a) Applicability.

This section shall apply to 1990 and subsequent model passenger cars, light-duty trucks, and medium-duty vehicles, and motor vehicle engines used in such vehicles required to be inspected under any California statutorily authorized motor vehicle emissions inspection and maintenance program. The warranty period shall begin on the date the vehicle is delivered to an ultimate purchaser, or if the vehicle is first placed in service as a “demonstrator” or “company” car prior to delivery, on the date it is first placed in service.

(b) General Emissions Warranty Coverage.

The manufacturer of each passenger car, light-duty truck, and medium-duty vehicle shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine:

(1) Is designed, built, and equipped so as to conform with all applicable regulations adopted by the Air Resources Board pursuant to its authority in chapters 1 and 2, part 5, division 26 of the Health and Safety Code; and

(2) Will, for a period of three years or 50,000 miles, whichever first occurs, pass a test established under section 44012 of the Health and Safety Code.

(c) Proper Use and Maintenance.

(1) Each manufacturer shall furnish with each new vehicle or engine written instructions for the maintenance and use of this vehicle or engine by the owner, which instructions shall be consistent with this article and applicable regulations in article 2 of this subchapter.

(2) An emission performance warranty claim may be denied if the manufacturer demonstrates that the vehicle or engine's failure of the test established under 44012 of the Health and Safety Code was directly caused by abuse, neglect, or improper maintenance as reflected by a failure to maintain or use the vehicle or engine in accordance with the written instructions for the required maintenance and use of the vehicle or engine furnished in conformance with subsection (1) above.

(3) Except as provided in subsection (6), a manufacturer may deny an emission performance warranty claim on the basis of noncompliance with the written instructions for required maintenance and use only if:

(A) An owner is not able to comply with a request by a manufacturer for evidence pursuant to subsection (5); or

(B) Notwithstanding the evidence presented pursuant to subsection (5), the manufacturer is able to prove that the vehicle failed an emission test established under section 44012 of the Health and Safety Code because the vehicle was abused, or the required maintenance and use was performed in a manner resulting in a component's being improperly installed or a component or related parameter's being adjusted substantially outside of the manufacturer's specifications, or maintenance was performed on a vehicle which resulted in the removing or rendering inoperative of any component affecting the vehicle's emissions.

(4) When determining whether an owner has complied with the written instructions for required maintenance and use, a manufacturer may require a owner to submit evidence of compliance only with those written instructions for which the manufacturer has an objective reason for believing:

(A) Were not performed, and

(B) If not performed could be the cause of the particular vehicle's exceeding applicable emission standards.

(5) Evidence of compliance with a maintenance instruction may consist of:

(A) A maintenance log book which has been validated at the approximate time or mileage intervals specified in for service by someone who regularly engages in the business of servicing automobiles for the relevant maintenance instruction(s); or

(B) A repair order, sales receipt or similar evidence showing that the vehicle has been submitted for scheduled maintenance servicing at the approximate time or mileage intervals specified for service to someone who regularly engages in the business of servicing automobiles for the purpose of performing the relevant maintenance; or

(C) A statement by the vehicle owner that the maintenance was performed at the approximate time or mileage interval specified using proper replacement parts.

(6) In no case may a manufacturer deny an emission performance warranty claim on the basis of:

(A) Warranty work or predelivery service performed by any facility authorized by the manufacturer to perform such work or service; or

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(B) Work performed in an emergency situation to rectify an unsafe condition, including an unsafe driveability condition, attributable to the manufacturer, provided the vehicle owner has taken steps to put the vehicle back in a conforming condition in a timely manner; or

(C) Any cause attributable to the vehicle manufacturer; or

(D) The use of any fuel which is commonly available in the geographical area in which the vehicle or engine is located, unless the written instructions for required maintenance and use specify that the use of that fuel would adversely affect the emission control devices and systems of the vehicle, and there is commonly available information for the owner to identify the proper fuel to be used.

(7) The owner may perform maintenance or have maintenance performed more frequently than required in the maintenance instructions.

(8) Except as specified in subsection (3)(B) above, failure of the vehicle or engine owner to ensure the performance of such scheduled maintenance or to keep maintenance records shall not, per se, be grounds for disallowing a warranty claim.

(d) Repair, adjustment, or replacement of any part under the warranty provisions of this article shall be performed at no charge to the vehicle or engine owner at a warranty station, except where a warranted part is not available to the vehicle or engine owner within a reasonable time (in no case more than 30 days) after the vehicle or engine is initially presented to the warranty station for repair. In case of such unavailability, repairs may be performed at any available service establishment, or by the owner, using any replacement part. The manufacturer shall reimburse the owner for his or her expenses including diagnostic charges for such repair or replacement, not to exceed the manufacturer's suggested retail price for all warranted parts replaced and labor charges based on the manufacturer's recommended time allowance for the warranty repair and the geographically appropriate hourly labor rate. A vehicle or engine owner may reasonably be required to keep receipts and failed parts in order to receive compensation for warranted reprise reimbursable due to such unavailability, provided the manufacturer's written instructions advise the owner of this obligation.

(e) The vehicle or engine manufacturer shall be liable for damages to other vehicle components proximately caused by a failure under warranty of any warranted part.

(f) Any replacement part may be used in the performance of any maintenance or repairs. Any replacement part designated by a manufacturer may be used in warranty repairs provided without charge to the vehicle owner. Such use shall not reduce the warranty obligations of the vehicle or engine manufacturer, except that the vehicle or engine manufacturer shall not be liable under this article for repair or replacement of any replacement part which is not a warranted part (except as provided under subsection (e) above).

(g) Any add-on or modified part exempted by the Air Resources Board from the prohibitions of Vehicle Code section 27156 may be used on a vehicle or engine. Such use, in and of itself, shall not be grounds for disallowing a warranty claim made in accordance with this article. The vehicle or engine manufacturer shall not be liable under this article to warrant failures of warranted parts caused by the use of such an add-on or modified part.

(h) Warranty Claim Procedures.

(1) A warranty claim may be submitted by bringing a vehicle to any repair facility authorized by the vehicle manufacturer to service that model vehicle.

(2) The manufacturer of each vehicle to which the warranty is applicable shall establish procedures as to the manner in which a claim under the emission performance warranty is to be processed. The procedures shall provide for a final decision and repair of a warrantable condition by the vehicle manufacturer within a reasonable time, not to exceed 30 days from the time at which the vehicle is initially presented for repair, or unless a delay:

(A) is requested by the vehicle owner, or

(B) is caused by an event not attributable to the vehicle manufacturer or the warranty station.

(3) Within the time period specified in subsection (2), the manufacturer shall:

(A) Notify the owner, in writing, an explanation why the claim is being denied.

(4) Failure to notify an owner that a warrantable condition does not exist within the required time period (under subsection (2) above), for reasons that are not attributable to the vehicle owner or events which are not beyond the control of the vehicle manufacturer or the warranty station, shall result in the vehicle manufacturer being responsible for repairing the vehicle free of charge to the vehicle owner.

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(5) The vehicle manufacturer shall incur all costs associated with a determination that an emission performance warranty claim is valid.

(i) Warranty services or repairs shall be provided at all of a manufacturer's dealerships which are franchised to service the subject vehicles or engines.

(j) The vehicle or engine owner shall not be charged for diagnostic labor which leads to the determination of a warrantable condition provided that such diagnostic work is performed at a warranty station.

(k) Throughout the vehicle or engine's warranty period defined in subsection (b), the vehicle or engine manufacturer shall maintain a supply of warranted parts sufficient to meet the expected demand for such parts. The lack of availability of such parts or the incompleteness of the repairs within a reasonable time period, not to exceed 30 days from the time the vehicle or engine is initially presented to the warranty station for repair, shall constitute an unavailability of parts for purposes of subsection (d).

(l) The Executive Officer may request and, in such case, the vehicle or engine manufacturer shall provide, any documents which describe that manufacturer's warranty procedures or policies.

(m) Prior to the 2001 model year, each manufacturer shall submit the documents required by subsection (c)(1) with the manufacturer's preliminary application for new vehicle or engine certification for approval by the Executive Officer. For 2001 and subsequent model years, each manufacturer shall submit the documents required by subsection (c)(1) with the Part 2 Application for Certification pursuant to the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," incorporated by reference in section 1961(d). The Executive Officer may reject or require modification of the documents required by subsection (c)(1). Approval by the Executive Officer of the documents required by subsection (c)(1) shall be a condition of certification. The Executive Officer shall approve or disapprove the documents required by subsection (c)(1) within 90 days of the date such documents are received from the manufacturer. Any disapproval shall be accompanied by a statement of the reasons therefore. In the event of disapproval, the manufacturer may petition the Board to review the decision of the Executive Officer.

NOTE: Authority cited: Sections 39600 and 39601, Health and Safety Code. Reference: Sections 43106, 43204, 43205, 44004, 44010, 44011, 44012, 44014, and 44015, Health and Safety Code.

REFERENCE